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SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF FIDELITY EXPLORATION & PRODUCTION COMPANY FOR AN ORDER ESTABLISHING A SPECIAL DRILLING UNIT FOR THE CCU 7-1-26-20 HORIZONTAL WELL FOR THE PRODUCTION OF OIL AND ASSOCIATED GAS AND HYDROCARBONS FROM THE PARADOX FORMATION COMPRISED OF LOTS 9 AND 10, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ AND SE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 6, AND NE $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 7, TOWNSHIP 26 SOUTH, RANGE 20 EAST, SLM, GRAND COUNTY, UTAH

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

Docket No. 2015-027

Cause No. 166-06

This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, October 28, 2015, at approximately 11:15 a.m., in the Auditorium of the Utah Department of Natural Resources Building in Salt Lake City. The following Board members were present and participated at the hearing: Chairman Ruland J. Gill, Jr., Susan S. Davis, Carl F. Kendell, Gordon L. Moon and Michael R. Brown. Board members Chris D. Hansen, and Richard K. Borden were unable to attend. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner Fidelity Exploration & Production Company ("Fidelity") were Wes Adams - Landman, David List - Senior Geophysicist, and Chuck Maybee - Senior Petroleum Engineer. Messrs. List and Maybee were recognized by the Board as experts in geology and petroleum engineering, respectively, for purposes of this

Cause. Frederick M. MacDonald, Esq., of and for MacDonald & Miller Mineral Legal Services, PLLC, appeared as attorney for Fidelity.

The Division of Oil, Gas and Mining (the "Division") did not file a staff memorandum in this Cause but participated in the hearing. Steven F. Alder, Esq., Assistant Attorney General, appeared as attorney for, and, with the Board's permission, John Rogers, Associate Director, Oil and Gas, asked questions on behalf of the Division. At the conclusion of Fidelity's presentation in-chief, Mr. Alder expressed that the Division had no objection to the granting of Fidelity's Request for Agency Action dated September 10, 2015 (the "Request"), as conformed to the testimony and other evidence provided at the hearing.

At the conclusion of Fidelity's and the Division's presentations-in-chief, Michael Coulthard, Petroleum Engineer, Utah State Office of the Bureau of Land Management (the "BLM"), made a statement confirming the BLM's support for the granting of the Request, as outlined in the BLM's Letter dated October 14, 2015 filed with the Board.

No other party filed a response to Fidelity's Request and no other party appeared or participated at the hearing.

The Board, having considered the testimony presented and the exhibits received into evidence at the hearing, being fully advised and for good cause, hereby makes the following findings of fact, conclusions of law and order in this Cause.

FINDINGS OF FACT

1. Fidelity is a Delaware corporation in good standing with its principal place of business in Denver, Colorado. It is an indirect subsidiary of MDU Resources Group, Inc. Fidelity is duly qualified to conduct business in the State of Utah, and is fully and appropriately bonded with all relevant Federal and State of Utah agencies.

2. The oil and gas underlying the lands at issue in this Cause are owned by the United States of America, administered by the BLM, and subject to the following Federal oil and gas leases:

<u>Lease</u>	<u>Lands</u> <u>(all within T26S, 20E, SLM)</u>
UTU-64821	Sec. 6: Lots 9 (38.55) and 10 (38.65), SE $\frac{1}{4}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$
UTU-53626	Sec. 6: W $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 7: NE $\frac{1}{4}$ NE $\frac{1}{4}$

(the "Subject Leases" and "Subject Lands," respectively). The operating rights in the Subject Leases, as relevant to this Cause (*see* Findings of Facts No. 5 below), are owned solely by Fidelity. However, there are different overriding royalty interest owners in each of the Subject Leases, as reflected on Exhibit C-2 admitted into evidence.

3. The Subject Lands and Subject Leases are either effectively or fully committed to the Cane Creek Federal Exploratory Unit, approved by the BLM effective April 15, 2002. Fidelity serves as Unit Operator.

4. Under the terms of the Cane Creek Unit Agreement, all oil and gas in all formations underlying the committed lands are unitized. However, production is only allocated on a participating area basis, established or revised by wells that are capable of producing Unitized Substances in Paying Quantities; *to wit*: “quantities sufficient to repay the costs of drilling, completing and producing operations, with a reasonable profit.” Production from any well not meeting the “Unit Paying Quantities” criteria and not otherwise within an established participating area is instead to be allocated on a leasehold basis.

5. Pursuant to an application to drill approved by both the BLM and the Division, Fidelity spud the CCU 7-1-26-20 Well (the “Subject Well”) on February 21, 2013 at a surface location 827 feet FNL and 864 feet FEL in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, and drilled it horizontally with a terminus located 2,748 feet FSL and 943 feet FWL in Lot 9 of Section 6. The lateral was drilled through and perforated in the Paradox formation, defined for purposes of this Cause as:

that interval between the stratigraphic equivalence of 3,962 feet and 7,684 feet, as shown on the Dual Induction Log of the CCU 7-1-26-20 Well, with a surface hole location in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 7, T26S, R20E, SLM,

and the Subject Well first produced on January 27, 2014, and was completed as a producing oil well on February 22, 2014. However, as evidenced by BLM Decision Letter dated October 22, 2014, the BLM determined the Subject Well does not satisfy the “Unit Paying Quantities” criteria under the Cane Creek Unit Agreement.

6. The lateral and perforated intervals of the Subject Well extend over portions of both of the Subject Leases. As a consequence, the BLM has requested Fidelity to obtain an order from the Board establishing a special drilling unit for the Subject Well so a communitization agreement can be prepared and approved in accordance with Federal regulations, guidelines and practices.

7. The Paradox formation is a complex conglomerate of resource-bearing clastics interbedded with salts. It constitutes a common source of supply of oil and associated gas and hydrocarbons; albeit, with compartmentalization that is difficult to predict.

8. Fidelity’s reservoir modeling, decline curve analysis and volumetric calculations reflect a drainage area of approximately 278 feet in width, 139 feet on either side of the lateral centerline, constituting approximately 25.2 acres, as depicted on Replacement Exhibit “P” admitted into evidence. As such, the Subject Lands are not smaller than the maximum area that can be effectively and economically drained by the Subject Well.

9. The testimony presented supports that a 660-ft. set back around the Subject Well, both laterally and vertically, should prevent any communication between wells, and there is no evidence before the Board to reflect a different set back should instead be adopted.

10. Although questionable that it may ever occur, in the event additional operations conducted on the Subject Well may prospectively result in the Subject Well being deemed by the BLM to produce United Substances in Paying Quantities as defined in the Cane Creek Unit Agreement, or if the Subject Lands are otherwise included within a Unit participating area, Fidelity desires that the requested drilling unit be suspended, the conforming communitization agreement be terminated, and the terms of the Cane Creek Unit Agreement then govern, particularly the participating area allocation provisions set forth therein.

11. A copy of the Request was mailed, postage pre-paid, certified with return receipt requested, and properly addressed to the addresses disclosed by searches of the respective BLM and Grand County records, and based on Fidelity's internal records, to all overriding royalty owners in the leases covering, and to the governmental agencies owning the oil and gas and having jurisdiction over said minerals underlying, the Subject Lands. Copies of the return receipts, evidencing receipt of such mailings, or of the returned mailing themselves, evidencing either their undeliverability to the last addresses disclosed by the

searches of the records indicated above, or the refusal of the addressee to pick them up from the United States Postal Service, were filed with the Board.

12. Notice of the filing of the Request and of the hearing thereon was duly published in the Salt Lake Tribune and Deseret Morning News on October 4, 2015 and in the Moab Times-Independent on October 8, 2015.

13. The vote of the Board members present in the hearing and participating in this Cause was unanimous (5-0) in favor of granting the Request.

CONCLUSIONS OF LAW

1. Due and regular notice of the time, place and purpose of the hearing was properly given to all parties whose legally protected interests are affected by the Request in the form and manner as required by law and the rules and regulations of the Board and Division.

2. The Board has jurisdiction over all matters covered by the Request and all interested parties therein, and has the power and authority to render the order herein set forth pursuant to Utah Code Ann. §§ 40-6-5(3)(b) and 40-6-6(6).

3. Fidelity has sustained its burden of proof, demonstrated good cause and satisfied all legal requirements for the granting of the Request as conformed to the testimony and other evidence provided at the hearing.

4. Creation of a special drilling unit for Paradox formation production from the Subject Lands for the Subject Well, retroactively to January 27, 2014, its date of first production, is required for the protection of the correlative rights of the parties owning interests in the Subject Leases, and is a requisite to allowing conforming communitization of the Subject Lands in accordance with Federal regulations, guidelines and practice, and the express request of the BLM. It is also fair, reasonable and justified under the circumstances.

5. Suspension of said drilling unit upon the determination by the BLM that the Subject Well is capable of producing Unitized Substances in Paying Quantities, as defined in the Cane Creek Unit Agreement, and/or inclusion of the Subject Lands within a Unit participating area, is fair, reasonable and justified under the circumstances.

6. Adoption of the 660-foot set back, both laterally and vertically for the Subject Well and as requested by Fidelity, will be protective of correlative rights and prevent waste, and is fair, reasonable and justified under the circumstances.

7. The relief granted hereby will result in consistent and orderly development and the greatest recovery of oil, and associated gas and hydrocarbons from the Paradox formation underlying the Subject Lands.

ORDER

Based upon the Request, testimony and evidence submitted, and the Findings of Fact and Conclusions of Law stated above, the Board hereby orders:

1. The Request as conformed to the testimony and other evidence provided at the hearing is granted.

2. A special drilling unit for the CCU 7-1-26-20 Well for the production of oil and associated gas and hydrocarbons for the Paradox formation, defined as:

that interval between the stratigraphic equivalence of 3,962 feet and 7,684 feet, as shown on the Dual Induction Log of the CCU 7-1-26-20 Well, with a surface hole location in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 7, T26S, R20E, SLM,

comprised of the following Grand County, Utah lands:

Township 26 South, Range 20 East, SLM

Sec. 6: Lots 9 (38.55) and
10 (38.65), SE $\frac{1}{4}$ NW $\frac{1}{4}$,
E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and
SE $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 7: NE $\frac{1}{4}$ NE $\frac{1}{4}$

(containing 357.20 acres)

is hereby established, retroactive to January 27, 2014, the date of first production from said Well.

3. No well producing from Paradox formation (as defined above) may be located closer than 660 feet from any portion of the CCU 7-1-26-20 Well's lateral without

an exception location approval by the Division or Board in accordance with Utah Admin. Code Rule R649-3-3.

4. This Order shall be suspended without further order of the Board as of the effective date of the determination by the BLM that the CCU 7-1-26-20 Well is capable of producing Unitized Substances in Paying Quantities, as defined in the Cane Creek Unit Agreement, and/or inclusion of the drilling unit lands in a Unit participating area. Fidelity, or its successor Unit Operator, shall provide to the Board's secretary a copy of the BLM Letter reflecting such determination so the Board's records may be properly noted to reflect such suspension becoming effective.

5. Pursuant to Utah Admin. Code Rules R641 and Utah Code Ann. § 63G-4-204 to 208, the Board has considered and decided this matter as a formal adjudication.

6. This Order is based exclusively on evidence of record in the adjudicative proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, all as required by the Administrative Procedures Act, Utah Code Ann. § 63G-4-208 and Utah Administrative Code Rule R641-109.

7. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 63G-4-208(e) - (g), the Board hereby notifies all parties in interest that they have the right to seek judicial review

of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order issued. Utah Code Ann. §§ 63G-4-401(3)(a) and 403. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board. Utah Code Ann. § 63G-4-302, entitled, “Agency Review - Reconsideration,” states:

(1)(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Id. The Board also hereby notifies the parties that Utah Admin. Code Rule R641-110-100, which is part of a group of Board rules entitled, “Rehearing and Modification of Existing Orders,” states:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of the month.

Id. See Utah Admin. Code Rule R641-110-200 for the required contents of a petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. §63G-4-302 and the deadline in Utah Admin. Code Rule R641-110-100 for moving to rehear this matter, the Board hereby rules that the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

8. The Board retains continuing jurisdiction over all the parties and over the subject matter of this Cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this order by the Utah Supreme Court.

9. For all purposes, the Chairman's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.

DATED this 18th day of November, 2015.

**STATE OF UTAH
BOARD OF OIL, GAS AND MINING**

By: 
Rulon J. Gill, Jr., Chairman

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2015, I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER for Docket No. 2015-027 Cause No. 166-06, to be mailed by Email or via First Class Mail with postage prepaid, to the following:

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